

ADA: What You Must Know to Protect Your Credit Union

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Agenda

- Welcome - John Bratsakis
- Brief Overview/Highlights - Andy Keeney
- Risk Analysis - Ken Otsuka
- Legal Commentary and Analysis - John Bredehoft
- Advocacy - John Bratsakis
- Questions and Answers

Welcome



Overview and Highlights

- Americans with Disabilities Act (ADA)
- “Places of public accommodation”
- Potential for litigation risk/Potential damages

Overview and Highlights


- Field of membership
- Screen reading software
- Accessibility Statement
- Speed bumps
- WCAG 2.0 AA
- How do you make a website more accessible?



Risk Alert - July 18, 2017

RISK Alert

ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.



Alert Type: Awareness Watch **Warning**

Law Firms Allege ADA Non-Compliance Related to Website Accessibility

Law firms representing private litigants have become increasingly aggressive in recent weeks in pursuing credit unions regarding website and mobile app accessibility suggesting they are not equally accessible to people with disabilities. Credit unions are encouraged to take the necessary steps to ensure their websites, including online banking sites and mobile applications, are accessible to individuals with disabilities.

Risks involving compliance and regulatory change that may have ambiguous requirements and stipulations are challenging - website accessibility and the Americans with Disabilities Act (ADA) is one challenging risk trending now.


Details

Recently consumer rights attorneys and the Department of Justice began filing or threatening to file legal action based on allegedly inaccessible websites and mobile applications due to numerous digital barriers. The state of California is an attractive state for many of these cases. In fact, a majority of the credit union cases have been brought to credit unions in California; however, others have also been introduced in Pennsylvania and Florida.

Although there are not yet specific regulations addressing website accessibility, these consumer rights attorneys are relying on the general language of the Americans with Disabilities Act (ADA), in addition to a violation of the California Civil Rights Unruh Act, to make demands and bring actions claiming that credit union websites are not equally accessible to people with disabilities.

The legal actions, typically beginning with a letter, allege that websites and/or mobile applications are not accessible to individuals with disabilities in violation of Title III of the ADA, which covers public accommodations. It is contended that websites contain barriers that limit the ability of individuals with disabilities to use assistive technology, such as screen reader software, to access the organization's website. Screen readers, commonly used by the blind or visually impaired, convert text displayed on web pages to audible synthesized speech or sends that information to a digital braille display. However, for screen readers to work with a website or application, the web developer must program the site for compatibility.

Date: July 18, 2017
Risk Category: Compliance; ADA; Web/Internet; E-commerce; Litigation
States: All
Share with:
 Risk Manager
 Marketing
 Web / Mobile App Developer
 IT
 Executive Management



To share risk insights or gain additional assistance:

- [Report a RISK Alert](#)
- [Ask a Risk Consultant](#)
- Contact a CUNA Mutual Group Risk & Compliance Consultant
• 800.637.2676, option 4
• riskconsultant@cnamutual.com

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Law Firms Allege ADA Non-Compliance Related to Website Accessibility

If the demand is ignored or disputed, a lawsuit is then filed in State Court or even possibly in Federal Court potentially leaving your credit union to damages and fees. For example, if a credit union is found in violation under the Unruh Act in California, the individual could be entitled to \$4,000 in damages for each instance, and an injunction requiring remediation of the website and attorneys' fees.

The Department of Justice (DOJ) is in the process of revising ADA regulation to establish specific guidelines for what makes an accessible website. In both 2010 and 2015, the DOJ proposed standards for website accessibility citing the [Web Content Accessibility Guidelines \(WCAG\) 2.0](#) developed by the Web Accessibility Initiative (WAI) of the [World Wide Web Consortium \(W3C\)](#). All signs continue to point to WCAG 2.0 as the standard to follow.

Risk Mitigation

Clearly, waiting until precise accessibility regulations are in place in 2018 could have costly consequences. Credit unions should start working towards making their websites, including online and mobile banking websites, accessible to people with disabilities. Credit unions should also ensure mobile applications are compliant.

- Conduct a thorough risk assessment on your websites and mobile applications and ensure content / services is accessible and compatible with assistive technology.
- If necessary, work with your IT, risk / compliance team, and vendors to remedy your website and mobile applications
- Use the [WCAG 2.0](#) to identify weaknesses that should be corrected to make the website accessible to individuals with disabilities.

[W3C](#) also provides a list of vendors offering website accessibility evaluation tools to help organizations determine if their website meets accessibility guidelines. Credit unions should use an evaluation tool to determine what adjustments, if any, need to be made to their websites.

If you receive a demand letter, policyholders should immediately report it to CUNA Mutual Group's Third Party Litigation to review coverage and develop appropriate next steps. Be assured, CUNA Mutual Group is monitoring case progress globally and ensures that strategy and litigation practices are consistent and streamlined for policyholders

Risk Prevention Resources

Access CUNA Mutual Group's [Protection Resource Center](#) at [cunamutual.com](#) for exclusive risk and compliance resources to assist with your loss control needs. The Protection Resource Center requires a User ID and password.

- RISK Alert: [New Lawsuits Allege Website Inaccessibility](#)
- Video: [Website Accessibility & ADA](#)



Access the Protection Resource Center for exclusive resources:

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Interested in learning more about ADA & Website Accessibility?

Contact a CUNA Mutual Group's Risk & Compliance Solutions at 800.637.2676, option 4 or by email at riskconsultant@cunamutual.com for additional risk insights.

Web Content Accessibility Guidelines (WCAG) 2.0

Principle	Guidelines
<p>Perceivable - information and user interface components must be presentable to users in ways they can perceive (it cannot be invisible to all of their senses)</p>	<ul style="list-style-type: none"> • Provide text alternatives for non-text content so that it can be changed into other forms people need (e.g., Braille/speech output using a screen reader, symbols or simpler language). • Provide captions for video and transcripts for the audio portion of multimedia and other alternatives for time-based multimedia. • Create content that can be presented in different ways without losing meaning. (For example, someone using a screen reader cannot access headings on a web page formatted in bold text unless proper HTML markup language is used) • Make it easier for users to see and hear content. Refers to color-blind and low-vision users.
<p>Operable - user interface components and navigation must be operable (the interface cannot require interaction that a user cannot perform)</p>	<ul style="list-style-type: none"> • Make all functionality available from a keyboard. • Give users enough time to read and use content. (Users with limited motor skills may get timed out) • Do not use content that causes seizures. Flashing object should be avoided or limited to 3 flashes per second. • Provide ways to help users navigate, find content and determine where they are.
<p>Understandable - information and the operation of user interface must be understandable (the content or operation cannot be beyond their understanding)</p>	<ul style="list-style-type: none"> • Make text readable and understandable. • Make content appear and operate in predictable ways. For example, avoid unannounced pop-ups. • Help users avoid and correct mistakes.
<p>Robust - content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies (as technologies and user agents evolve, the content should remain accessible)</p>	<ul style="list-style-type: none"> • Maximize compatibility with current and future user tools.



Don't Wait for the Final Rule to be Issued

- Conduct risk assessment on credit union website and mobile applications
- Work with vendor with website accessibility experience
- Work with online banking and mobile banking app vendors
- Ensure content and services is accessible and compatible with assistive technologies
- Make adjustments to minimize risk

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Legal Commentary and Analysis

- Legal basis for claims has been around since 1990: Americans with Disabilities Act (amended in 1998, greatly expanding number of individuals who are “disabled”)
- Do not be surprised at overbroad mischaracterizations that may sound silly: “Web sites for the blind” may not be intuitive, but “access for the visually-disabled” is

Legal, continued

- Title III of the ADA, compared to Title I and II
- Simple statutory language: “full and equal enjoyment” of the goods, services, and facilities of a place of public accommodation
- That’s all the law says!

Legal, continued

- Other types of access: detailed regulations
- 2010: DOJ regulations. Delayed and, as of July 2017, apparently off the radar
- Federal court in California: how can anyone know what to do? Due process issue

Legal Defenses

1. Is a web site a place of public accommodation? The Wynn-Dixie anomaly.
2. Who has standing to make the claim?
3. What standards apply?
4. How can a credit union respond?

Advocacy Efforts

- Letter to Department of Justice (DoJ) Rep. Eric Swalwell (D-CA) & Ron DeSantis (R-FL)
 - 61 Congressional Signatures requesting DoJ finalize rules
 - Very least provide immediate guidance/clarification
 - One Maryland Member signed onto letter
 - Working with other offices of delegation

Advocacy Efforts

- DoJ considering clarification on two issues
 - whether they should clarify that a website is NOT public accommodation. (does not seem likely)
 - Does not appear there's an appetite to create new regulations
 - Rescind the rule entirely and leave it to the judiciary

Advocacy Efforts on the Hill

- Web Content Accessibility Guidelines WCAG 2.0 could be finalized
 - Pushing to have done as soon as possible
- Challenges
 - Administration adverse to creating new regulations
 - Legislative & Regulatory remedy is a long process
 - WCAG could be modified in 2018

Advocacy Efforts on the Hill

- Continue to meetings with delegation
- Work with Maryland & D.C. Attorney General
- Coordinate with Leagues, CUNA and other trades to provide resolution



Resource Tools

- <http://www.kaufmanandcanoles.com/news/articles/credit-union-website-comprehensive-tools-on-ada>



Questions?



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